

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 JACK LEE MARCUM,

Plaintiff,

5 v.

6 AMERICAN FAMILY INSURANCE
7 COMPANY,

8 Defendant.

Case No. 2:18-cv-02399-APG-CWH

**ORDER REMANDING CASE TO STATE
COURT**

9 Defendant American Family Insurance Company removed this case to federal court on
10 December 19, 2018. The removing party has the burden of proving that removal is proper and that
11 this court may assert jurisdiction over the parties and dispute. In its Petition for Removal,
12 American Family alleged that the monetary amount at issue exceeds this court's minimum
13 diversity jurisdiction amount because the plaintiff asserts several causes of action and demanded
14 \$93,750.00 to settle his claim before filing suit. ECF No. 1 at 2. American Family offered no
15 evidence that the demand was reasonable, and nothing in the Complaint supports the inference that
16 the value of the case exceeds \$75,000. Therefore, I ordered American Family to show cause why
17 this action should not be remanded to the state court for lack of subject matter jurisdiction.

18 Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*,
19 437 U.S. 365, 374 (1978). "A federal court is presumed to lack jurisdiction in a particular case
20 unless the contrary affirmatively appears." *Stock West, Inc. v. Confederated Tribes of the*
21 *Colville Res.*, 873 F.2d 1221, 1225 (9th Cir. 1989). "Federal jurisdiction must be rejected if
22 there is any doubt as to the right of removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d
23 564, 566 (9th Cir. 1992) (*citing Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th
Cir. 1979)). Thus, courts "strictly construe the removal statute against removal jurisdiction."

1 *Gaus*, 980 F.2d at 566. “The ‘strong presumption’ against removal jurisdiction means that the
2 defendant always has the burden of establishing that removal is proper.” *Id.*

3 “Where a complaint is unclear as to the total amount of damages sought, but alleges only
4 upper or lower limits or types of damages, a district court is free in its preponderance-of-the-
5 evidence analysis to make estimations of the amount of damages that could be obtained
6 consistent with the vague wording of the complaint.” *Elliker v. Contractors Bonding & Ins. Co.*,
7 3:12-cv-00438-RCJ-WGC, 2013 WL 757621, at *1 (D. Nev. Feb. 27, 2013) (*citing Guglielmino*
8 *v. McKee Foods Corp.*, 506 F.3d 696, 700–01 (9th Cir. 2007)). In making that analysis, judges
9 can make “reasonable deductions, reasonable inferences, or other reasonable extrapolations from
10 the pleadings to determine whether it is facially apparent that a case is removable,” and “may use
11 their judicial experience and common sense in determining whether the case stated in a
12 complaint meets federal jurisdictional requirements.” *Roe v. Michelin N. Am., Inc.*, 613 F.3d
13 1058, 1061-1062 (11th Cir. 2010) (internal quotations omitted); *see also Ashcroft v. Iqbal*, 556
14 U.S. 662, 679 (2009) (“Determining whether a complaint states a plausible claim for relief . . .
15 requires the reviewing court to draw on its judicial experience and common sense”).

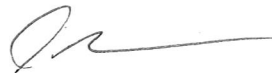
16 Here, there is considerable doubt that the amount in controversy exceeds this court’s
17 jurisdictional threshold. Although the policy amount is \$100,000 (ECF No. 9 at 3:13-14), that is
18 not the value of the case because there is no reasonable basis to assert the plaintiff will recover
19 anywhere near that amount. The Complaint alleges that the plaintiff “has incurred medical
20 expenses in excess of \$19,260.47” and has received \$5,000.00 already. ECF No. 1-1 at 10. Thus,
21 only \$14,260.47 is at issue under the policy. Even if punitive damages are awarded for a bad faith
22 claim, that amount would not approach \$75,000.

1 The plaintiff's pre-suit demand of \$93,750 is not dispositive. "A settlement letter is
2 relevant evidence of the amount in controversy if it appears to reflect a reasonable estimate of the
3 plaintiff's claim." *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (citations omitted).
4 The plaintiff's lawyer's two letters (ECF Nos. 9-1, 9-2) discuss the minor injuries and related
5 treatment. They do not support a reasonable estimate of such a high value. *See Jackson v Select*
6 *Portfolio Servicing, Inc.*, 651 F.Supp.2d 1279 (S.D. Ala. 2009) ("Settlement offers commonly
7 reflect puffing and posturing, and such a settlement offer is entitled to little weight in measuring
8 the preponderance of the evidence. On the other hand, settlement offers that provide 'specific
9 information . . . to support [the plaintiff's] claim for damages' suggest the plaintiff is 'offering a
10 reasonable assessment of the value of [his] claim' and are entitled to more weight.").

11 Based on my judicial, legal, and practical experience and common sense, it is highly
12 unlikely that the amount in controversy exceeds \$75,000. The nature of the injuries and the
13 allegations underlying the claims against American Family (especially those for tortious breach
14 of the implied covenant) do not suggest such an award. American Family has not met its burden
15 of establishing by a preponderance of the evidence that the amount in controversy exceeds
16 \$75,000. *Roe*, 613 F.3d at 1061-1062; *Iqbal*, 556 U.S. at 679. Consequently, I remand this
17 action to state court.

18 IT IS THEREFORE ORDERED this case is remanded to the state court from which it
19 was removed for all further proceedings. The Clerk of the Court is instructed to close this case.

20 Dated: January 8, 2019.



21 ANDREW P. GORDON
22 UNITED STATES DISTRICT JUDGE
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